No. 76-80

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

TRUCKDRIVERS, CHAUFFEURS AND HELPERS LOCAL UNION NO. 100, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 432 F. 2d 569. The decision and order of the National Labor Relations Board (Pet. App. 7a-29a) are reported at 216 NLRB No. 176.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-6a) was entered on March 24, 1976. A petition for rehearing was denied on May 7, 1976. The petition for a writ of certiorari was filed on July 20, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, the Board correctly found that the Union and the Company had reached final agreement regarding the terms of the collective bargaining contract, making the Union's refusal to execute the contract a violation of Section 8(b)(3) of the Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition at pages 2-3.

STATEMENT

1. Prior to 1973, Duro Paper Bag Manufacturing Company ("the Company") was signatory to the Teamsters Master Freight Agreement and to an addendum covering purely local working conditions. In 1973, the Company withdrew from membership in the employer association that negotiated the master agreement and, following expiration of the agreements, informed the Union that it intended to bargain on its own behalf (Pet. App. 11a-12a).

Bargaining sessions were held on November 17 and 29 and December 7, 1973. At the first meeting of the negotiating teams, Union Business Agent Jack O'Banion asked Company Director of Employee Relations Jack Rains if he had the authority to consummate the agreement. Rains replied that he did, and asked the same question of O'Banion. O'Banion replied, "Let's go on" (Pet. App. 12a-13a; A. 123).[1] The parties then exchanged

[1] "A." references are to the printed appendix to the parties' briefs filed in the court of appeals. A copy has been lodged with the Clerk of this Court.

their respective proposals for a new collective bargaining agreement. At the second meeting they reached agreement on many provisions (Pet. App. 13a).

At the end of the third meeting the only differences remaining for resolution concerned the grievance procedure and wages. Differences over the grievance proposals were resolved when the Union acceded to the Company's suggestion that arbitrators be selected by agreement from lists drawn up by the parties, rather than from the Federal Mediation and Conciliation Service (Pet. App. 13a-14a; A. 118-122, 153-154, 179-180). The parties then agreed on the wage issue (Pet. App. 14a; A. 120-123). Rains advised the Union men that the agreement would be typewritten and sent to them the next day (Pet. App. 14a; A. 123).

On the following day, December 8, Rains telephoned O'Banion, who accepted Rains' proposed language memorializing the agreement. Rains and O'Banion also agreed that O'Banion would provide the Union's list of local arbitrators at some future date (Pet. App. 14a-15a; A. 128).

On December 10, Rains signed the written agreement and submitted it for execution to the Union. Instead of returning the agreement, however, the Union called a secret membership meeting, held on December 15, at which the membership unanimously voted to reject the agreement. The Company was not told of the meeting or of the membership vote (Pet. App. 15a; A. 174). The Union negotiating team subsequently refused to execute the agreement and insisted that the Company sign the Master Freight Agreement or face a strike (Pet. App. 15a-17a).

2. Upon charges filed by the Company, the Board determined that the Company and the Union had reached

an agreement regarding the contract, and that the Union's refusal to execute the agreement violated Section 8(b)(3) of the Act. The Board rejected the Union's contentions that agreement as to substantive provisions of the contract was never reached and that, even if it were, the Company knew that ratification by the membership was a condition precedent to consummation (Pet. App. 17a).

The Board ordered the Union to execute the bargaining agreement upon the Company's request (Pet. App. 8a, 23a-24a, 26a).

The court of appeals upheld the Board's decision and enforced its order, ruling that "there is clearly substantial evidence in the record viewed as a whole from which the Board could conclude that an agreement was reached" (Pet. App. 5a).

ARGUMENT

Petitioner argues that the Union and the Company negotiators never reached final agreement on all contract terms, and that therefore the Union's refusal to execute the agreement did not violate Section 8(b)(3). In particular, petitioner claims that agreement was not reached as to the grievance procedures since the parties never exchanged their lists of arbitrators. This essentially factual contention does not warrant further review by this Court.

In any event, the court of appeals correctly upheld the Board's order. The record shows that at the December 7 meeting the parties agreed to all of the essential parts of the contract, including the principle of selecting arbitrators from lists prepared by each party, and that the specific names on the lists were considered to be details that did not affect the substance of the agreement. After O'Banion requested additional time to

supply the Union's list of arbitrators, Rains submitted the contract to O'Banion for execution without the Union's list having been attached, and in this form O'Banion submitted it to the union membership, showing that neither Rains nor O'Banion considered the particular composition of the list an essential contract term. Even when the Union refused to execute the contract, it never based its refusal on the parties' failure to exchange lists. The names on the Union's list did not require the Company's approval; nor did the Company's list require approval by the Union.[2] In short, the Board correctly found that the parties had reached accord on the contract terms even though the exchange of lists was yet to come.

Since the parties had agreed, ordering the Union to execute the agreement was not, as petitioner suggests (Pet. 6-7), contrary to the federal policy of promoting labor peace by fostering "mutually agreed upon methods of arbitration and grievance settlement" (*id.* at 6). Nor does the decision below necessarily sanction resort by the Board to principles of contract law different from those that would apply in the federal courts (Pet. 8-11).[3] Contrary to petitioner's suggestion (Pet. 8), the Board did not rule that a mutually binding contract between union and company might be predicated upon agreement on less than all of the essential terms. Rather, it found that the timing of the exchange of lists was not essential to the agreement that the parties in this case had already reached. As we have shown, that finding is amply supported by the record.

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[2]The agreement contemplated that the mutual assent of the parties would be required before any individual could be selected from the combined lists to arbitrate a dispute (Pet. App. 38a).

[3]This argument, in any event, was not raised in the court of appeals and is therefore not properly presented here. *Lawn* v. *United States*, 355 U.S. 339, 362 n. 16.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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